

JOIE OSGOOD

IBLA 88-548

Decided December 21, 1990

Appeal from decision of the State Director, California Bureau of Land Management, denying protest against determination that a hiatus of land between two township lines was unsurveyed land owned by the United States. CA 942.

Affirmed.

1. Patents of Public Lands: Generally--Surveys of Public Lands: Generally

When locations and lines established by an official Government survey are identified, they are conclusive, and the corner of a Government subdivision is where the United States surveyors in fact established it, whether such location is right or wrong. Where, as a result of two independent surveys, a hiatus was created between the south line of one township and the north line of the adjoining township, such hiatus was not included in patents to lands in either township but remains public land subject to survey.

APPEARANCES: Paul R. Minasian, Esq., Oroville, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Joie Osgood has appealed a May 31, 1988, decision by the State Director, California Bureau of Land Management (BLM), denying her protest against a BLM determination that a hiatus created by a double set of corners and township lines between Tps. 17 and 18 N., R. 4 E., Mount Diablo Meridian, Butte County, California, was unsurveyed public land. According to a TRW real estate information services printout in the file, appellant owns 480 acres in sec. 2 and 632 acres in sec. 1, T. 17 N., R. 4 E., adjoining the northern township line of T. 17 N.

The facts are not in dispute. The original township line between Tps. 17 and 18 N., R. 4 E., was established by Joseph Traskolawski in 1853. Because Traskolawski's line did not satisfy the requirements imposed by the General Land Office, Robert Hays was commissioned to establish a new township line in 1855. In executing his survey, Hays recovered and destroyed the monuments set by Traskolawski. Immediately upon completing the remaining exterior lines of T. 17 N., R. 4 E., Hays surveyed the subdivisions of T. 17 N. as a single unit. A plat of Hays' survey was approved on

January 3, 1856. All patents issued in T. 17 N. relied on the Hays survey. Included in the file are three patents to portions of secs. 2 and 3, T. 17 N., R. 4 E. These patents were issued in 1868, 1869, and 1879.

In 1867, Ephriam Dyer surveyed what he believed to be the common line between Tps. 17 and 18 N. In his survey of the borders of T. 18 N., R. 4 E., Dyer made no mention of finding any of Hays' 1855 monuments. Dyer ran a "random" line between the township corners and set new corners in positions differing from those of Hays. Having completed the township exteriors, Dyer next surveyed the subdivisions of T. 18 N., as a single unit. A plat of Dyer's survey was approved on June 22, 1867. All patents in T. 18 N. relied on the Dyer survey.

In 1913, L. B. "Ben" McCoy executed a survey of a portion of the township line and found the Hays corners still in place. McCoy recovered both the 1855 corners established by Hays and the 1867 corners set by Dyer between sec. 2, T. 17 N., and sec. 35, T. 18 N. McCoy documented the existence of two township lines between secs. 1, 2, and 3, T. 17 N., R. 4 E., and secs. 34, 35, and 36, T. 18 N., R. 4 E.

In 1980, responding to a request from the Butte County Surveyor, BLM's Cadastral Surveyor, Ronald S. Hamilton, conducted a field investigation of the two township lines. A February 20, 1981, report of the investigation includes the finding that "[a] double set of corners, Hays and Dyer, can only be identified on the line between sections 2 and 35, Tps. 17 and 18 N., R. 4 E." The supervisory land surveyor recommended "a resurvey of the line between sections 2 and 35, Tps. 17 and 18 N., R. 4 E. * * * to mark the gap between the townships" (Report at 6).

By letter dated March 10, 1981, BLM's Chief, Branch of Cadastral Survey, notified the Butte County Supervisor that the BLM did not "recognize a hiatus or make claim to a purported hiatus between the Hays and Dyer corners." The Chief explained that since "no patents were issued relative to lands adjoining the area in question along the north boundary of T. 17 N., R. 4 E., prior to the approval of the Dyer resurvey * * * the corners of the Hays survey were superseded as no bona fide rights existed based upon these (Hays) corners." However, in a February 22, 1985, letter, the current Branch Chief, Cadastral Survey, reversed the position taken by his predecessor, and informed the county supervisor that

[u]nder the circumstances it is incorrect to state that bona fide rights do not exist based upon the Hays corners * * *. If each survey exists on the ground as indicated by the record, then title would surely be related to the corresponding survey. If the surveys overlapped then ownership of the area in question would require some form of adjudication. If the surveys do not overlap then adjoining owners would have title to the respective monuments and, if any area existed between the two surveys this would still be public land.

To verify two distinct lines would require some definite form of original corner evidence. [Emphasis in original.]

On November 4, 1987, the Chief, Branch of Cadastral Survey, notified the county supervisor and all landowners adjacent to the hiatus "that title to this strip is still considered public land under the jurisdiction of the Federal Government."

By letter dated December 4, 1987, counsel for appellant filed a protest against the contradictory positions taken by Cadastral Survey in the letters of March 10, 1981, and November 4, 1987. Counsel requested BLM to issue a declaration stating that the Dyer survey was controlling and that the Government had no claim to a hiatus area between the two townships.

BLM's position, as set forth in the State Director's decision denying the protest, is that the Dyer boundary between the two townships cannot serve to "cancel, annul, or otherwise supercede" the boundary previously established by Hays (Decision at 2). The decision states that Dyer's failure to recover Hays' corners was unquestionably an error, and that undoubtedly, neither Dyer nor the General Land Office could have intended two township lines separating Tps. 17 and 18 N. (Decision at 3). However, Dyer's error could not affect private rights under the "original" survey, since, where the original corners may be recovered or reestablished, they control the lands patented thereunder, and therefore it is immaterial that all patents were issued subsequent to the Dyer survey (Decision at 5).

The decision further states that because two separate and distinct township boundaries exist, there is a hiatus between Tps. 17 and 18 N., which has neither been surveyed nor relinquished by the Government. Therefore, title to the hiatus is still in the United States (Decision at 10).

Appealing the State Director's decision, appellant contends that "the survey of the two townships was not separate and independent, and a hiatus was not created." Appellant suggests that the patents issued after the Dyer survey fail to mention either the Dyer or the Hays survey, but since the Dyer survey had been approved "by the time of the first patent" the Dyer survey should be controlling." ^{1/}

A set of circumstances strikingly similar to those in the instant case was before the court in United States v. Weyerhaeuser Co., 392 F.2d 448 (9th Cir. 1968), where a Government surveyor in 1896 was commissioned to survey T. 27 S., R. 8 W., Willamette Meridian, Oregon. T. 28 S., adjoining on the south, had been surveyed by another Government surveyor in 1855. Surveying the line between the townships, the 1896 surveyor was unable to locate several of the original corners set by his predecessor in 1855. Consequently, he placed his monuments at various intervals on what he believed to be the southern boundary of the township he was surveying.

During road-building excavations prior to 1960, the monuments set by the 1855 surveyor were recovered. They were located on a line south of that monumented by the 1896 surveyor. A dependent resurvey of the area between the lines was performed in 1961. The hiatus was subdivided and designated as Township 27-1/2. The court held that the land in patents to T. 27 S. "could not have been ascertained, for use or occupation by the patentees

^{1/} Appellant speaks of "patents" in general and makes no reference to any particular patent in either township.

except by reference to [the 1896] survey and plat," and that those patents "did not purport to convey any land which was not included in that survey." Id. at 451.

The above holding in Weyerhaeuser is applicable in this case. Included in the record are the field notes and maps pertaining to the Hays and Dyer surveys. The record also contains reports based on more recent investigations concerning the location of the township lines. These documents leave no room for dispute that there were two independent surveys, the Hays survey of T. 17 N., and the Dyer survey of T. 18 N., and that the corners of both surveys were recovered. As discussed earlier, these surveys delineated separate township lines resulting in a hiatus of unsurveyed land between the townships.

Contrary to appellant's argument, the Dyer survey cannot supercede or control the Hays survey because each was an independent survey delineating and subdividing a separate township. O. O. Cooper, 59 I.D. 254, 257 (1946). Thus, the only survey pursuant to which patents were subsequently issued in T. 17 N. is the Hays, and not the Dyer survey. Accordingly, appellant and her predecessors-in-interest received their conveyances under patents controlled by the Hays survey. As has long been recognized by this Department, a survey of public land creates and does not merely identify the boundaries of sections of land. Elmer L. Lowe, 80 IBLA 101, 104 (1984). When the locations of corners and lines established by an official Government survey are identified, they are conclusive, and the corner of a Government subdivision is where the United States surveyors in fact established it, whether such location is right or wrong. O. O. Cooper, supra. Surveys of the United States, after acceptance, are presumed to be correct and, after a long lapse of time from acceptance will not be disturbed except upon clearest proof of mistake or fraud on the part of those who executed the survey. State of Oregon, 78 IBLA 13, 21 (1983), and cases there cited. No such proof is offered herein.

We therefore conclude BLM correctly determined that the independent surveys of Hays and Dyer resulted in a hiatus between the township lines in question, and that such hiatus remains public land subject to survey.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

John H. Kelly
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge